

## **Remarks**

### **I. Status of claims**

Claims 1-24 are pending.

### **II. Claim rejections under 35 U.S.C. § 103**

The Examiner has rejected claims 1-24 under 35 U.S.C. § 103(a) over Gaspard (U.S. 2002/0055818) and various unsubstantiated prior art.

#### **A. Independent claim 1**

Independent claim 1 recites the step of “receiving from one or more users respective capacity attributes, including position information, route information and excess capacity information specifying available freight-hauling capacity, for each mobile carrier entity in a set of freight-hauling mobile carrier entities.”

In accordance with Gaspard's teachings, the host 140 does not receive excess capacity information from a user. Instead, the host 140 infers whether freight space is available to fulfill a freight transportation request based on a search of a route database 145a that contains information about existing routes that have been created by the host 140 (see ¶ 58). The host 140 infers the available freight haulage space from the cubic space reserved in the scheduled ones of the transportation requests (see last sentence of ¶ 60: “It is to be understood that the freight transportation requests include reservations for cubic space (whether or not the space is actually used) in the creation of a route”). Nowhere does Gaspard teach that the host 140 receives from one or more users excess capacity information specifying available freight-hauling capacity for freight-hauling mobile carrier entities, as now recited in independent claim 1. Indeed, in the context of Gaspard's invention, all of the transportation vehicles are controlled by the same entity. Therefore, there would not have been any reason whatsoever for Gaspard's system to receive excess capacity information from the transportation vehicles because the host 140 already has access to the information needed to infer the freight haulage space that is available on the transportation vehicles.

The Examiner has acknowledged that Gaspard does not teach or suggest "receiving from one or more users respective capacity attributes, including position information, route information and excess capacity information specifying available freight-hauling capacity, for each mobile carrier entity in a set of freight-hauling mobile carrier entities." In an attempt to make-up for the failure of Gaspard to teach or suggest this feature, the Examiner has stated that:

The examiner takes Official Notice that receiving from one or more users capacity information specifying available freight-hauling capacity is old and well known in the art. An example of this is logistics dispatchers who receive excess capacity information via radio from delivery drivers in order to more efficiently schedule routes.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gaspard, regarding receiving capacity and position attributes from and for mobile carrier entities, to include the step of receiving excess capacity information, because it would enable more efficient scheduling for the mobile carrier entities.

With this rejection, however, the Examiner has not established a proper *prima facie* case of obviousness under 35 U.S.C. § 103(a) in accordance with MPEP § 706.02(j) because the Examiner has not provided the requisite factual basis and not established the requisite motivation to support his deemed conclusion that the features recited in claim 1 would have been obvious to one of ordinary skill in the art at the time of the invention. The Examiner's conclusory assertion that it would have been obvious to modify the teachings of Gaspard "because it would enable more efficient scheduling for the mobile carrier entities" does not meet the Examiner's obligation to point to some teaching or suggestion in Gaspard or in the knowledge generally available that would have led one of ordinary skill in the art to the invention recited in claim 1. In the processing of meeting this obligation, the Examiner should address the fact that neither Gaspard nor the unsubstantiated facts asserted by the Examiner teaches or suggests that such a modification of Gaspard's teachings "would enable more efficient scheduling for the mobile carrier entities." The Examiner also should address the fact that his proposed modification of Gaspard's system would not server any useful purpose in the context of Gaspard's invention because the host 140 already has the information needed to infer the freight haulage space that is available on the transportation vehicles.

Without a proper explanation for combining Gaspard and the unsubstantiated facts asserted by the Examiner to arrive at the invention recited in claim 1, the Examiner has failed to establish a proper *prima facie* case of obviousness and the rejection of claim 1 under 35 U.S.C. § 103(a) over Gaspard and the unsubstantiated prior art should be withdrawn.

The Examiner's rejection of claim 1 also should be withdrawn because there is no support for the Examiner's assertion that "receiving from one or more users capacity information specifying available freight-hauling capacity is old and well known in the art" nor is there support for the Examiner's asserted example of "logistics dispatchers who receive excess capacity information via radio from delivery drivers in order to more efficiently schedule routes." Under 37 CFR § 1.104(d)(2), the Examiner is requested to cite actual documentary evidence in support of his unsubstantiated assertions regarding the knowledge generally available at the time of the invention. Alternatively, if the Examiner is aware of facts within his personal knowledge that provide the requisite factual basis and establishes the requisite motivation to support his deemed conclusion that the features recited in claim 1 would have been obvious, the Examiner is requested to provide an affidavit in accordance with 37 CFR § 1.104(d)(2). Otherwise, the Examiner's rejection of claim 1 under 35 U.S.C. § 103(a) over Gaspard and the unsubstantiated prior art should be withdrawn for this additional reason.

Finally, MPEP § 2144.03B explains the obligations of the Examiner when taking official notice of a fact that is asserted to be common knowledge without specific reliance on documentary evidence (citations omitted):

If such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. .... The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made.

In his rejection of claim 1, the Examiner did not provide any basis or factual findings that support his assertions. Instead, the Examiner merely asserted that the facts he relied upon were generally known at the time the invention was made. If the Examiner persists with these rejections, he is required under MPEP § 2133.03B to provide specific factual findings that show that "receiving from one or more users capacity information specifying

available freight-hauling capacity is old and well known in the art” and that support the Examiner’s asserted prior art example of “logistics dispatchers who receive excess capacity information via radio from delivery drivers in order to more efficiently schedule routes.” If the Examiner cannot comply with the requirements of MPEP § 2133.03B, the Examiner’s rejection of claim 1 under 35 U.S.C. § 103(a) over Gaspard and the unsubstantiated prior art should be withdrawn for this additional reason.

It is noted that the requirements of MPEP §§ 706.02(j) and 2133.03B and 37 CFR § 1.104(d)(2) are in place to avoid the Examiner’s substitution of unprincipled gut feelings about a claim for a proper, rigorous analysis of the claim language and the prior art.

For at least these reasons, the Examiner’s rejection of independent claim 1 under 35 U.S.C. § 103(a) over Gaspard and the unsubstantiated prior art should be withdrawn.

B. Claims 2-9, and 21-24

Each of claims 2-9, and 21-24 incorporates the features of independent claim 1 and therefore is patentable over Gaspard and the unsubstantiated prior art for at least the same reasons explained above. Claims 8, 9, 21, and 23 also are patentable over Gaspard and the unsubstantiated prior art for the following additional reasons.

1. Claim 8

Claim 8 recites “further comprising computing an amount of capacity available on a given mobile carrier entity based upon excess capacity information received from the given mobile carrier entity.”

In support of his rejection of claim 8, the Examiner has indicated that in paragraph 60 lines 1-2 Gaspard teaches “transportation freight requirements are evaluated (i.e., computed) against available capacity (volume and weight) to determine if the load can be carried by the mobile carrier in question.” In paragraph 60, Gaspard merely teaches that each new transportation request is evaluated as to available passenger seats, available freight requirements, and profitability. This teaching does not constitute “computing an amount of capacity available on a given mobile carrier entity based upon excess capacity information received from the given mobile carrier entity,” as recited in claim 8. Indeed, the disclosure in

paragraph 60 does not specify how the “available freight requirements” are determined. In addition, as explained above, Gaspard does not even hint that the host 140 receives excess capacity information specifying available freight-hauling capacity from a given mobile carrier entity.

The point made in the preceding paragraph was raised in the Amendment dated November 1, 2005. The Examiner, however, did not address this point in the subsequent Office action dated January 11, 2006. If the Examiner persists with the present rejection of claim 8, Applicants ask the Examiner to respond to the argument presented in the preceding paragraph.

## 2. Claim 9

Claim 9 recites that “the excess capacity information received from the given mobile carrier entity includes maximum volume information and maximum weight haulable by the given mobile carrier entity and volume information and weight for each item of freight being hauled by the given mobile carrier entity.”

In support of his rejection of claim 9, the Examiner has indicated that in paragraph 60 lines 2-4 Gaspard teaches “freight requirements of volume and weight for a freight transport request (i.e., excess capacity information) are received from the database to determine if a freight transport request can be fulfilled for a given mobile carrier entity.” The freight requirements for a freight transportation request, however, does not constitute excess capacity information for a given mobile carrier entity. Indeed, the freight requirements specified in a freight transportation request merely describe the volume and weight of a particular shipment. This information does not reveal anything about the capacity of a given mobile carrier nor anything about the items being carried by the given mobile carrier because the request has not been scheduled yet (see, e.g., FIG. 5).

Furthermore, in paragraph 60, Gaspard merely teaches that each new transportation request is evaluated as to available passenger seats, available freight requirements, and profitability. This disclosure does not teach that the host 140 receives from a given mobile carrier entity the maximum volume information and maximum weight haulable by the given mobile carrier entity and volume information and weight for each item of freight being hauled by the given mobile carrier entity. Indeed, the disclosure in paragraph 60 does not

specify how the “available freight requirements” are determined. In addition, as explained above, Gaspard does not even hint that the host 140 receives excess capacity information specifying available freight-hauling capacity from a given mobile carrier entity.

The points made in the two preceding paragraphs were raised in the Amendment dated November 1, 2005. The Examiner, however, did not address these points in the subsequent Office action dated January 11, 2006. If the Examiner persists with the present rejection of claim 9, Applicants ask the Examiner to respond to the arguments presented in the two preceding paragraphs.

### 3. Claim 21

Claim 21 recites that “the receiving comprises prompting the one or more users to enter the respective capacity attributes.”

The Examiner has acknowledged that Gaspard does not teach or suggest this feature. Indeed, in accordance with Gaspard’s teachings, the host 140 does not receive excess capacity information from a user. To make-up for this failure of Gaspard’s teachings, the Examiner has stated that:

Official Notice is taken that prompting a user to enter information, including excess capacity information, is old and well known in the art of computers. This provides an easy to use interface to enter data into a computer system.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gaspard, regarding receiving cube and weight information for mobile carrier entities, to include the step of prompting the user to enter the capacity information, because it would provide an easy way to enter data into a computer system.

With this rejection, however, the Examiner has not established a proper *prima facie* case of obviousness under 35 U.S.C. § 103(a) in accordance with MPEP § 706.02(j) because the Examiner has not provided the requisite factual basis and not established the requisite motivation to support his deemed conclusion that the features recited in claim 21 would have been obvious to one of ordinary skill in the art at the time of the invention. The Examiner’s conclusory assertion that it would have been obvious to modify the teachings of Gaspard “because it would provide an easy way to enter data into a computer system” does not meet

the Examiner's obligation to point to some teaching or suggestion in Gaspard or in the knowledge generally available that would have led one of ordinary skill in the art to the invention recited in claim 21. In particular, although the concept of prompting a user to enter information is old and well known in the art of computers, this fact would not have motivated one skilled in the art at the time of the invention to modify Gaspard's system to prompt a user to enter information that is not used by Gaspard's system. Without a proper explanation for combining Gaspard and the unsubstantiated facts asserted by the Examiner to arrive at the invention recited in claim 21, the Examiner has failed to establish a proper *prima facie* case of obviousness and the rejection of claim 21 under 35 U.S.C. § 103(a) over Gaspard and the unsubstantiated prior art should be withdrawn.

#### 4. Claim 23

Claim 23 recites "receiving haulage rates from the identified freight haulage job candidates, wherein the selecting is based at least in part on the received haulage rates."

The Examiner has acknowledged that Gaspard does not teach or suggest this feature. Indeed, in the context of Gaspard's invention, all of the transportation vehicles are controlled by the same entity and therefore there would not be any reason whatsoever to receive haulage rates from the transportation vehicles. To make-up for this failure of Gaspard's teachings, the Examiner has stated that:

Official Notice is taken that selecting a carrier based on a received quote is old and well-known in the art. This ensures the most competitive rate is achieved to save money.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gaspard, regarding receiving cube and weight information for mobile carrier entities, to include the step of receiving rate information and selecting a carrier based on the rate information, because it would save money in transporting a particular freight haulage job.

With this rejection, however, the Examiner has not established a proper *prima facie* case of obviousness under 35 U.S.C. § 103(a) in accordance with MPEP § 706.02(j) because the Examiner has not provided the requisite factual basis and not established the requisite motivation to support his deemed conclusion that the features recited in claim 23 would have

been obvious to one of ordinary skill in the art at the time of the invention. The Examiner's conclusory assertion that it would have been obvious to modify the teachings of Gaspard "because it would save money in transporting a particular freight haulage job" does not meet the Examiner's obligation to point to some teaching or suggestion in Gaspard or in the knowledge generally available that would have led one of ordinary skill in the art to the invention recited in claim 23. In particular, although the concept of competitive bidding is old and well known, this fact would not have motivated one skilled in the art at the time of the invention to modify Gaspard's system to receive haulage rates from the transportation vehicles when all of the transportation vehicles are controlled by the same entity in the context of Gaspard's invention. Without a proper explanation for combining Gaspard and the unsubstantiated facts asserted by the Examiner to arrive at the invention recited in claim 23, the Examiner has failed to establish a proper *prima facie* case of obviousness and the rejection of claim 23 under 35 U.S.C. § 103(a) over Gaspard and the unsubstantiated prior art should be withdrawn.

C. Independent claim 10

Independent claim 10 has been amended to include features essentially tracking the pertinent features of independent claim 1 discussed above. Claim 10 therefore is patentable over Gaspard and the unsubstantiated prior art for at least the same reasons explained above in connection with claim 1.

D. Claims 11-17

Each of claims 11-17 incorporates the features of independent claim 10 and therefore is patentable over Gaspard and the unsubstantiated prior art for at least the same reasons explained above.

E. Independent claim 18

Claim 18 has been amended and now recites:

18. A portable device, comprising:

a portable housing incorporating a display screen and one or more control buttons;

a memory in the housing;

a wireless transceiver in the housing;

a positioner in the housing and operable to compute position information;

a scanner in the housing and operable to direct a light beam at a symbol and to recover information embedded in the symbol based upon detected reflections from the symbol; and

a controller in the housing and coupled to the memory, the wireless transceiver, the positioner, and the scanner and operable to obtain from the scanner capacity attributes, including position information, route information and excess capacity information, for a mobile carrier entity and to control wireless transmission of the capacity attributes through the wireless transceiver in accordance with a mobile wireless communication protocol.

In his rejection of independent claim 18, the Examiner has taken the position that the communications system 100 that is shown in FIG. 1 of Gaspard constitutes the portable device recited in independent claim 18. In particular, the Examiner has indicated that: the memory and wireless transceiver, which may be components of any one of the passenger and freight terminals Pi, Fi, correspond to the memory and wireless transceiver recited in claim 18; the GSP receiver 170, which may be located in the vehicle 150, corresponds to the positioner recited in claim 18; and that the host computer system 140 corresponds to the controller recited in claim 18. The cited elements of Gaspard's communication system 100, however, are not all in the same portable housing, as now recited in claim 18.

For at least this reason, the Examiner's rejection of independent claim 18 under 35 U.S.C. § 103(a) over Gaspard and the unsubstantiated prior art should be withdrawn.

#### F. Claims 19 and 20

Each of claims 19 and 20 incorporates the features of independent claim 18 and therefore is patentable over Gaspard for at least the same reasons explained above.

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### III. Conclusion

For the reasons explained above, all of the pending claims are now in condition for allowance and should be allowed.

Charge any excess fees or apply any credits to Deposit Account No. 08-2025.

Respectfully submitted,

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